In the present case, of course, there can be no suggestion of deliberation.

For these reasons the appeal was dismissed with costs.

Buttrose and Wee Chong Jin JJ. concurred.

Appeal dismissed.

Solicitors: *Rodyk & Davidson; Murphy & Dunbar.*

GOULD v. REGINA

[A. Cr. J. (Wee Chong Jin J.) November 7, 1962]

[Singapore — Magistrate's Appeal No. 156 of 1962]

Criminal Law and Procedure — Criminal Negligence — Penal Code, s.304A — Consideration of circumstances in assessing sentence — Road traffic accident — Failure to stop after — Consideration of circumstances in disqualification.

Road Traffic — Disqualification — Consideration of circumstances in.

The appellant was convicted on a charge under section 304A of the Penal Code and sentenced to a term of imprisonment for one year and was disqualified for a period of 10 years from holding or obtaining a licence to drive all classes of vehicles.

The appellant was driving a motor-car at about 11.25 p.m. along a straight stretch of road which was well lit and has a dual carriageway. Travelling ahead of him was a taxi. As the taxi approached a junction of cross roads it slowed down. The appellant overtook the taxi on its near side and in so doing knocked down a pedestrian who was crossing the road in front of the taxi from the concrete centre road divider towards the nearside of the road. The impact took place when the pedestrian was about 3 feet from the nearside of the road. The appellant did not stop and proceeded onwards at a speed slightly faster than that at which it was travelling when it overtook the taxi. The impact of the collision threw the pedestrian to the nearside of the road and he received fatal injuries. The appellant testified that he had the impression that the taxi was like going to turn right or was going to make a "U" turn but without giving any sign or signal to that effect. The appellant pulled out to his left to pass the taxi and just as he was about to pass the taxi felt a bump and saw that his front windscreen had fractured on the nearside. The appellant stated that he neither saw nor knew what caused the bump or the fracture of the windscreen but through that something had been thrown at his car from the side of the road. After the bump he continued to drive along because as he was in an area strange to him he was afraid to stop in case he got involved in an incident and got beaten up. He did not report the accident immediately because according to him he did not know the location of any police station at that time although he intended to report the accident immediately to the police. He made a report to the police the next morning after consulting a solicitor.

On appeal it was argued firstly, that on the facts as found by the District Judge, the appellant had not failed to do something which a reasonable man would have done and was therefore not guilty of negligence within the meaning of section 304A of the Penal Code and secondly, that the failure of the appellant to stop at the scene of the accident did not, as a matter of principle, increase the degree of negligence on the part of the appellant and that the District Judge was influenced by that fact in deciding upon imposing a term of imprisonment instead of a fine.

Held: (1) to overtake at night, at a speed of over 30 miles an hour, another vehicle, which was slowing down but had given no signal that it was going to make a turn, on an admittedly straight stretch of a dual carriageway, the road being dry and fairly well lit, and in the process of overtaking to knock down a pedestrian who had almost crossed the road to the extent of being only about 3 feet from the nearside edge of the road, without seeing him and without knowing what object, be it a person or a thing, one had come into contact with, is clear evidence of a failure to keep a proper look-out such as to amount to criminal negligence within the meaning of section 304A of the Penal Code;

(2) the fact that a motorist failed to stop after the accident should not be taken into consideration in assessing sentence on a charge under section 304A of the Penal Code. In the present case the District Judge was possibly influenced by the appellant's failure to stop immediately after the accident. Taking all the circumstances of the case into consideration, the appropriate sentence would be one of three months' imprisonment and disqualification from holding or obtaining a licence for a period of three years.

MAGISTRATE'S APPEAL.

N. A. Christopher for the appellant.

T. S. Sinnathuray (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Wee Chong Jin J.: The appellant was convicted on a charge under section 304A of the Penal Code and sentenced to a term of imprisonment for one year and was disqualified for a period of 10 years from holding or obtaining a licence to drive all classes of vehicles. He now appeals against both conviction and sentence.

At the trial before the learned Criminal District Judge the prosecution relied on an eyewitness, a taxi driver by the name of Goh Boon Siew. His evidence was that on the 18th of January, 1962 at about 11.25 p.m. he was driving his taxi SH. 2867 along Upper Serangoon Road from the direction of Yio Chu Kang Road towards the City. There were no passengers in his taxi at the time and he was travelling along a well lighted dual carriageway about 2 feet from the concrete centre road divider at an estimated speed of over 40 m.p.h. As he approached the junction of Upper Serangoon Road with an unnamed lane on the left (which, with a road leading to Kampong Potong Pasir on the right, forms a sort of cross-roads with Upper Serangoon Road) he saw the deceased. When he first saw the deceased who was wearing a white sarong, the latter was about 100 feet in front of him and was walking slowly straight across the road from the concrete centre road divider towards his nearside of the road. On seeing the deceased he flashed his head lights and lifted his foot off the accelerator and as a result of this the speed of his taxi was reduced to over 30 m.p.h. When the deceased got to about 3 feet from the nearside of the road, a Ford Consul car BD. 7604 driven by the appellant which had overtaken the taxi on its nearside knocked into the deceased. At the moment of impact the taxi was about 20 feet behind the deceased and had been overtaken a short distance by the Ford Consul which at the time of overtaking, impact and subsequently, had

only its side lights on. The impact of the collision threw the deceased to the nearside of the road. The Ford Consul car did not stop, however, but proceeded onwards at a speed slightly faster than that which it was travelling when it overtook the taxi.

The appellant's evidence at the trial was that at the time in question he was following directly behind this taxi at a distance of about 3 or 4 cars lengths away and that he had been following this taxi, which was then travelling close to the centre road divider, for a distance of about half a mile. As both vehicles approached the cross roads earlier referred to he noticed a break in the centre road divider to enable cars to turn right into Kampong Potong Pasir or to make a "U" turn. At the forward end of the break the taxi driver reduced his speed abruptly and pulled over slightly to the nearside giving the appellant the impression that he was either going to turn right or to make a "U" turn but without giving any sign or signal to this effect. On noticing this the appellant pulled out to his left to avoid colliding with and to pass the taxi and just as he was about to pass the taxi he felt a bump and saw that his front windscreen had fractured on the nearside around the licence disc. The appellant stated that he neither saw nor knew what caused the bump or the fracture of the windscreen but thought that something had been thrown at his car from the side of the road. After the bump he continued to drive along because as he was in an area strange to him he was afraid to stop in case he got involved in an incident or got beaten up. He did not report the accident immediately because according to him he did not know the location of any police station at that time although he intended to report the accident immediately to the police. He made a report to the police the next morning after having previously consulted a solicitor he knew.

According to the appellant he did not see the deceased at any time because his full attention was directed towards what the taxi was doing and because he did not expect anyone to cross the road the way the deceased was alleged to have crossed it in view of the fact that there was a zebra crossing a little further up the road and also because the taxi obscured his view. According to the appellant his speed was between 30 to 40 m.p.h. and at no stage did he apply his brakes at all.

The learned trial District Judge accepted the evidence of the taxi driver and came to the conclusion that "there was a gross failure on the part of the accused to keep a proper lookout and that this gross failure amounted, in the circumstances, to criminal negligence within the meaning of section 304A of the Penal Code, of a very high order".

In arguing the appeal counsel for the appellant while conceding that, if the facts show that the appellant was in any way negligent, the conviction must stand, nevertheless contends that on the facts as found by the learned trial Judge the appellant had not failed to do something which a reasonable man would have done. I am unable to agree. To overtake at night, at a speed of over 30 m.p.h., another vehicle, which was slowing down but had given no signal that it was going to make a turn, on an admittedly straight stretch of a dual carriageway, the road being dry and fairly well lit, and in the process of overtaking to knock down a pedestrian who had almost crossed the road to the extent of being only about 3 feet from the nearside edge of the road, without seeing him and without knowing what object, be it a person or a thing, one had come into contact with, is in my opinion clear evidence of a failure to keep a proper lookout such as to amount to criminal negligence within the meaning of section 304A of the Penal Code.

As regards sentence, counsel for the appellant contends that, taking into consideration that the collision occurred at a time when the streets are normally practically free of traffic, when the appellant was overtaking another vehicle on a dual carriageway and at a speed not excessive in the circumstances, the negligence displayed was not so grave as to merit a term of imprisonment. He contends that the failure of the appellant to stop at the scene of the accident did not, as a matter of principle, increase the degree of negligence on the part of the wrong-doer and that the learned trial District Judge was influenced by that fact in deciding upon imposing a term of imprisonment instead of a fine.

I have, although with considerable hesitation, come to the conclusion that the learned trial District Judge was possibly influenced by the appellant's failure to stop immediately after the accident and after a careful consideration of all the circumstances of the case I consider an appropriate sentence would be one of three months' imprisonment and disqualification from holding or obtaining a licence for a period of three years.

In the result the appeal against the conviction is dismissed and the sentence is reduced to a term of imprisonment for three months and disqualification from holding or obtaining a licence to drive all classes of vehicles for three years.

Appeal against conviction dismissed; Sentence reduced.